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July 10, 2006

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: February 15, 2006

Case Number: TSO-0358

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored.

I. Background

The individual has held a DOE security clearance since 1992. During that time, the LSO has conducted six personnel security interviews with the individual (1992, 1993, 1996, 1997, 1999 and 2005) to inquire about her use of alcohol and the circumstances surrounding four arrests for Driving Under the Influence (DUI) of Alcohol. The individual's DUI arrests occurred in 1989, 1992, 1996 and 2004.

After the individual's third arrest for DUI, the LSO referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist) for a forensic psychiatric evaluation. The DOE consultant-psychiatrist examined the individual in January 1997 and diagnosed the individual as suffering from an Alcohol Related Disorder, Not Otherwise Specified as defined in the Diagnostic and Statistical Manual of Mental Health Disorders, 4th edition, text revised (DSM-IV-TR). *See* Exhibit 6. The individual convinced the DOE consultant-psychiatrist during the psychiatric evaluation that she was trying to distance herself from alcohol. For this reason, the DOE consultant-psychiatrist recommended that the individual be allowed to participate in an Employee Assistance Program Referral Option (EAPRO) to address her Alcohol Related Disorder. *Id.* The DOE consultant-psychiatrist suggested that the EAPRO treatment include one-

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

to-one counseling, Alcoholics Anonymous (AA) and the monitoring of the individual's alcohol usage. *Id.* The individual successfully completed the EAPRO on June 24, 1999. *See* Ex. 19.

In December 2004, the individual received her fourth DUI. Soon after the LSO learned of the new arrest, it conducted its sixth PSI with the individual (2005 PSI). Subsequently, the LSO referred the individual to a psychologist (DOE consultant-psychologist) for a forensic mental health evaluation. The DOE consultant-psychologist examined the individual in September 2005 and concluded that the individual suffers from alcohol abuse, an illness which, in his opinion, causes, or may cause, a significant defect in the individual's judgment and reliability. *See* Exhibit 3. The DOE consultant-psychologist opined that the individual had not shown adequate evidence of rehabilitation or reformation as of the time of the evaluation.

In December 2005, the LSO initiated formal administrative review proceedings. The LSO first informed the individual that her access authorization had been suspended pending the resolution of certain derogatory information that created substantial doubt regarding her continued eligibility to hold a security clearance. In a Notification Letter that it sent to the individual, the LSO described this derogatory information and explained how that information fell within the purview of two potentially disqualifying criteria. The relevant criteria are set forth in the security regulations at 10 C.F.R. § 710.8, subsections h and j (Criteria H and J).²

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations and requested an administrative review hearing. On February 17, 2006, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. Subsequently, I convened a hearing within the regulatory time frame specified by the Part 710 regulations.

At the hearing, six witnesses testified. The LSO called one witness and the individual presented her own testimony and that of four witnesses. In addition to the testimonial evidence, the LSO submitted 31 exhibits into the record; the individual tendered four exhibits.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security

² Criterion H concerns information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment and reliability." 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8 (j).

determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer’s Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites two potentially disqualifying criteria as the bases for suspending the individual’s security clearance, *i.e.*, Criteria H and J. To support both criteria, the LSO relies on the same information. That information includes the following:

- ? The 2005 diagnosis of the DOE consultant-psychologist that the individual suffers from Alcohol Abuse, in Early Full Remission, an illness which, in the opinion of the psychologist causes, or may cause, a significant defect in the individual’s judgment and reliability.
- ? The 1997 diagnosis of the DOE consultant-psychiatrist that the individual met the DSM-IV-TR criteria for Alcohol Related Disorder, Not Otherwise Specified.
- ? The individual’s 1989 arrest for DUI when she registered a breath alcohol concentration (BAC) level of .17 and .16 on two tests.
- ? The individual’s 1992 arrest for DUI when she registered a BAC level of .23 and .24 on two tests.
- ? The individual’s 1996 arrest for DUI when she registered a BAC level registered .17.

- ? The individual's 2004 DUI when a blood test revealed registered .25 of ethyl alcohol.
- ? The individual completed an 18-month DUI program in 1998 and a 24-month EAPRO program in 1999. Despite her completion of these programs, the individual continued to consume alcohol excessively and ultimately received another alcohol-related arrest.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health and alcohol use under Criteria H and J respectively. A mental illness such as alcohol abuse can cause a significant defect in an individual's psychological, social and occupational functioning which, in turn, raises concerns from a security standpoint about possible defects in a person's judgment, reliability, or stability. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline I, ¶ 27. In addition, excessive alcohol consumption is a security concern because the behavior can lead to the exercise of questionable judgment, unreliability, and a failure to control impulses, and can increase the risk that classified information may be unwittingly divulged. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline G, ¶ 21.

IV. Findings of Fact

The following facts are essentially uncontroverted. To the extent there are discrepancies in the record, I will note them as appropriate.

The individual's first DUI arrest occurred in 1989. On the night in question, the individual allegedly consumed one beer and one shot of whiskey at a bar. Ex. 12. After the individual left the bar, the police pulled the individual's vehicle over for swerving. *Id.* at 7. A subsequent BAC test administered to the individual yielded results of .17 and .16. *Id.* at 11; Ex. 30. The individual pled guilty to the DUI charge, was fined by the court, placed on three years probation and ordered to do community service. Ex. 12 at 13-15.

In June 1992, the individual received her second DUI. The individual had consumed between four and five beers and one mixed drink over the course of the evening before she got behind the wheel of her vehicle. Ex. 11 at 8-9. En route home, the individual was stopped for speeding. Ex. 31. The police administered a BAC test to the individual which revealed levels almost three times the legal limit in her State of residence (.23 and .24). The individual pled guilty to the DUI charge. The judge in the case fined the individual and restricted her driving privileges. In addition, the judge ordered the individual to attend an 18-month Drinking-Driving program, attend weekly group counseling sessions, and perform 10 days of community service on weekends. During a personnel security interview (PSI) conducted in August 1993 (1993 PSI) to discuss the individual's 1992 DUI, the individual provided the following information to the personnel security specialist:

I had very poor judgment and . . . I was just weak at the time . . . I wasn't very smart . . . I will never let that happen again. I learned a great deal from this.

Ex. 11 at 24.

In April 1995, the individual was arrested a third time for DUI. On the night in question, the individual shared a bottle of wine with a companion over dinner. The individual consumed two mixed drinks later that night before the police stopped her for erratic driving. Ex. 10 at 11-14. The individual failed a breathalyzer when her BAC registered .17. The individual pled “no contest” to the DUI and received 90 days home detention and seven years probation. *Id.* at 18-19. The court also ordered the individual’s license to be suspended for three years. *Id.* During a PSI conducted in 1996 to discuss the circumstances of the 1995 DUI, the individual claimed that she had changed her drinking habits and had no intention of drinking excessively in the future. *Id.* at 55. The individual agreed to be evaluated by a DOE consultant-psychiatrist after the PSI.

A DOE consultant-psychiatrist examined the individual in January 1997 and concluded that the individual suffered from an Alcohol Related Disorder Not Otherwise Specified. Ex. 5 at 6. In a Psychiatric Report, the DOE consultant-psychiatrist noted that the individual continued to drink at the time he evaluated her. While the DOE consultant-psychiatrist noted that the individual’s decision in this regard showed poor judgment, he accepted the individual’s assertion that she would not drink and drive again and would not socialize with friends who drink excessively. *Id.* The DOE consultant-psychiatrist determined that the individual was a good candidate for EAPRO and predicted that she would likely successfully complete the program. *Id.*

After receiving the Psychiatric Report from the DOE consultant-psychiatrist, the LSO conducted its fourth PSI with the individual in April 1997. Ex. 9. During the 1997 PSI, the LSO explained to the individual that EAPRO is a 24-month program. *Id.* at 7. The personnel security specialist explained that if the individual elected not to participate in the EAPRO then the LSO would suspend her security clearance and refer her for administrative review proceedings. *Id.* at 14. The individual elected to participate in EAPRO and agreed to the terms of the program, including the submission to random alcohol/drug testing. Ex. 24. The individual told the LSO that she was also enrolled in an 18-month court-ordered recovery program. Ex. 31 at 3.

One year into EAPRO, the LSO conducted its fifth PSI with the individual. During the 1999 PSI, the LSO inquired whether the individual would consume alcohol after completing EAPRO. The individual responded, “[p]robably not, seems to be, not a problem.” Ex. 8 at 25. When queried whether there would be any additional arrests, the individual responded negatively. *Id.*

Between June 1997 and June 1999, the individual submitted to numerous random alcohol tests, all which yielded negative results. Ex. 21. On June 24, 1999, the individual successfully completed EAPRO. Ex. 19.

On December 7, 2004, the individual received her fourth DUI. The individual was driving home from a holiday party after consuming as many as four glasses of wine and another alcoholic beverage between 4:00 pm and 7:00 pm. Ex. 7 at 8; Transcript of Hearing (Tr.) at 63. A police officer initiated a traffic stop of the individual’s vehicle after observing the vehicle being driven in an erratic manner. Ex. 16. According to the police report, the officer smelled an odor of alcohol on the individual and noticed that the individual’s speech was slurred. *Id.* The individual refused to submit to a field sobriety test or a BAC test. *Id.* After being transported to the police station, an officer took blood from the individual. A toxicology report shows that the blood ethyl alcohol content of the individual’s blood on the evening of December 7, 2004 registered .25. *Id.*

The individual reported to the LSO that the court fined her, restricted her driving privileges for three months, ordered her to attend 45 hours of traffic school and placed her on three years of probation. Ex. 18.³

In April 2005, the LSO conducted its sixth PSI with the individual. During that interview, the individual admitted to blacking out in the past when she was drinking heavily. Ex. 7 at 40. She also acknowledged that EAPRO personnel had advised her not to consume alcohol, although she chose to do so anyway. *Id.* at 41, 72.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).⁴ After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. The Individual's Testimonial and Documentary Evidence

At the hearing, the individual expressed remorse for her past actions and testified that she is humiliated by her past mistakes. Tr. at 22. She acknowledged that alcohol has caused her problems in the past, but she does not believe that she currently has a problem with alcohol. *Id.* at 29.

The individual opined at the hearing that her four DUIs do not constitute a pattern. *Id.* at 27. Rather, she argued that she is "only guilty of a relatively recent error in judgment." *Id.* She maintained at the hearing that she will "not make that mistake again." *Id.* at 31.

The individual testified that after her third DUI in 1996, she made some positive changes in her life. *Id.* at 27.⁵ She attributed her 2004 DUI to her becoming "lax." *Id.* She explained that in December 2004, she intended to have one or two glasses of wine "but got caught up in socializing and celebrating." *Id.* She added that she has made even more changes since the 2004

³ At the hearing, the individual testified that the court had placed her on 10 years probation. Tr. at 161.

⁴ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

⁵ She testified that she moderated her alcohol use, got out of a bad relationship, changed her friends, and began living a healthier lifestyle by engaging in sporting activities, giving up caffeine, limiting her sugar intake and eating healthier. *Id.* at 73.

DUI that will help her make better decisions in the future. *Id.* at 29. Specifically, while she still consumes alcohol, she testified that she has moderated the amount that she drinks and no longer drinks so much that her judgment is “jeopardized.” *Id.* at 31. The individual also testified that she now has a plan to prevent her from receiving another DUI. She explained that she either has a designated driver or will take a cab if she consumes alcohol. *Id.* at 30. She also revealed that her partner and friends consume alcohol but that she no longer frequents bars. *Id.* at 77.

The individual explained at the hearing that she does not abstain from alcohol “because she does not believe she abuses it,” and because “alcohol benefits her overseas work.” *Id.* In fact, she expressed her opinion that she could not do her overseas work if she did not drink alcohol. *Id.* at 67. She also revealed at the hearing why she did not take the advice of the persons in EAPRO who counseled her not to drink. She testified, “I didn’t want to stop drinking. . . . I feel that I can control it and that my drinking is . . . kept in check now and moderated.” *Id.* at 50. She added that she consumes as many as three drinks at home but never drinks and drives. *Id.* at 50-51. She also testified that she likes her beer and wine and does not consider her consumption levels to be an “alcoholic mode of living.” *Id.* at 51. She concluded by stating that if the DOE were to require her to give up alcohol, she would have to decide whether she would give something up that she considers pleasurable in order to keep her job. *Id.* at 55.

The individual submitted into the record a Certificate of Completion from the 1st Offender Program showing that she completed four months of an education program as required by her sentencing for the 2004 DUI. Ex. C. She also submitted laboratory test results showing that her liver enzymes were not elevated in January 2003, December 2003, January 2005 and February 2006. *See* Exhibits B and D.

B. Supervisor #1’s Testimony

At the hearing, the individual’s second tier supervisor provided a glowing testament to the individual’s professional skills and work ethic. Tr. at 89. The supervisor has known the individual for 15 years and has observed her advance in the workplace. *Id.* at 85-86. According to supervisor #1, the individual is an excellent worker who is dedicated and hard-working. *Id.* at 89. She opined that the individual uses good judgment in her work. *Id.*

The supervisor expressed her opinion that the individual experienced a “significant emotional event” that changed her life in 2004 when she received her fourth DUI. *Id.* at 92. The supervisor does not believe that the individual will have another DUI. *Id.* When asked at the hearing why she believed that the individual did not experience a “significant emotional event” in 1996 after she received her third DUI and was confined to home detention, the supervisor opined that the individual’s employer “enabled” her. *Id.* at 93. The supervisor explained that when the employer set up a computer in the individual’s home and allowed her to continue to work while confined by court order to her home, the individual did not suffer the same negative repercussions associated with her home confinement as she would have had she not been allowed to work. *Id.* at 95.

C. Supervisor #2's Testimony

Supervisor #2 is the individual's group leader. *Id.* at 102. She has known the individual for 14 years. *Id.* Supervisor #2 opined that the individual's drinking never affected her work. *Id.* at 104. Specifically, supervisor #2 testified that the individual is an exemplary employee who is honest, reliable, and owns up to her mistakes. *Id.* at 105. Moreover, supervisor #2 stated that she saw no evidence that the individual was experiencing any social or interpersonal problems. *Id.* Supervisor #2 testified that she and the individual do not socialize outside of work. *Id.* at 108. She testified that she has seen the individual consume alcohol at lunch to celebrate a special occasion. *Id.* She added, however, that she has not seen the individual consume alcohol since December 2004. *Id.*

D. Supervisor #3's Testimony

Supervisor #3 has known the individual for 16 or 17 years. *Id.* at 112. He was the individual's direct supervisor from 1991 or 1992 until 2000. *Id.* at 114. Supervisor #3 testified that he recently took on a collateral duty and only did so on the condition that the individual be assigned to him. *Id.* He explained that the individual is "trustworthy, prompt, never absent, and a very solid performer." *Id.* at 115.

Supervisor #3 has traveled on business with the individual both domestically and abroad. *Id.* at 119. He testified that they have consumed alcohol together while on business. *Id.* He stated that he has never seen the individual "get out of control" when drinking on business trips. *Id.* He explained that he has never seen her stumble or slur her speech. *Id.* He also added that she has not gone off for hours on her own so he could not find her. *Id.* In short, he does not believe that alcohol negatively impacted the individual's work. *Id.*

According to supervisor #3, it is the cultural norm in some foreign countries to partake in alcohol during the workday. *Id.* at 117. He added that in foreign countries, one must establish rapport. *Id.* Not partaking in alcohol in these foreign countries, opined supervisor #3, could be diplomatically sticky. *Id.* at 117. Supervisor #3 stated that he is comfortable with the individual going to a foreign country where alcohol is involved and confident that she will make good decisions and not exhibit bad judgment. *Id.* at 134.

When asked if he counseled the individual about the three DUIs that she received while she was one of his subordinates, supervisor #3 related that he told the individual to find out if she had a problem and to take care of it. *Id.* at 128. He testified that he viewed the individual's alcohol-related arrests as personal issues since they were not affecting her work. *Id.* He concluded by stating that he "is running a team and as long as the mission gets done, that's his bottom line." *Id.* at 126.

E. The Partner's Testimony

The individual's partner testified by telephone that she and the individual have known each other for one and one-half years and established a partner relationship in September 2005. *Id.* at 141-143. She related that the individual consumes alcohol a "couple times during the week." *Id.* at 143. According to the partner, the individual has a glass or two of wine or a beer or two during

the week and occasionally a cocktail on the weekends. *Id.* She testified that the individual never drives after drinking alcohol. *Id.* at 145. She stated that the individual will take a taxi or public transportation if she drinks. *Id.* The partner stated that she does not want to be with someone with “gets DUIs.” *Id.* at 151. For this reason, she believes that the individual understands that she has a lot to lose if she were to get another DUI. *Id.*

F. The DOE consultant-psychologist’s Testimony

The DOE consultant-psychologist testified twice at the hearing. During his first appearance, he explained clearly and convincingly how he reached his diagnosis of alcohol abuse and why he did not believe that the individual had achieved the state of rehabilitation or reformation at the time he evaluated her. *Id.* at 15-18. He pointed out during his testimony that the individual has never sought treatment on her own. *Id.* at 48. Rather, all the treatment that the individual has received to date has been either court-ordered or suggested by the DOE as a condition of her keeping her clearance. *Id.* The DOE consultant-psychologist voiced his concern that despite the individual’s participation in, and completion of, several rehabilitation and alcohol education programs, the individual has continued to engage in destructive behavior. *Id.* He added the individual’s neurochemistry (i.e. wiring) causes her to have a drinking tendency. *Id.* at 58. It is this neurochemistry that leads to her poor decision making. *Id.* He added that since her alcohol abuse is still present, he is concerned that she will not make good decisions in the future. *Id.*

The DOE consultant-psychologist testified a second time after listening to the testimony of the individual and all of her witnesses. He opined that the individual is still suffering from alcohol abuse and has not shown adequate evidence of rehabilitation or reformation. *Id.* at 154-155. He believes that the individual is in denial and that she has more of a substance abuse problem than she believes. *Id.* at 156. He concluded his testimony by stating that none of the witnesses who testified on the individual’s behalf convinced him that she does not currently suffer from alcohol abuse. *Id.* at 157.

G. Hearing Officer Evaluation of Evidence

Based on the testimonial and documentary evidence before me, I find that the individual currently suffers from alcohol abuse and that she has not demonstrated adequate evidence of rehabilitation or reformation from that mental illness.

As an initial matter, the DOE consultant-psychologist provided convincing testimony to support the diagnosis of alcohol abuse in this case. I found that his expert opinion outweighed any probative value that I could have attributed to the normal liver enzyme test results submitted by the individual.

Regarding the individual’s rehabilitation or reformation from her alcohol abuse, the overwhelming weight of the evidence convinces me that the individual has achieved neither state. First, the individual’s failure to accept and acknowledge that she currently has a problem with alcohol is, in my opinion, a major impediment to her recovery efforts. *See Personnel Security Hearing* (Case No. TSO-0306), <http://oha.doe.gov/cases/security/tso0306.pdf>. Second, the individual appears not to have embraced her three prior rehabilitation programs in a meaningful way. Specifically, she completed an 18-month court-ordered Drinking-Driving

Program and weekly group counseling sessions in 1992 yet resumed drinking to excess to the point where she received two more DUIs. She also completed a second 18-month court-ordered recovery program in 1998 but continued to drink. In addition, she completed a 24-month EAPRO in 1999 during which time she continued to consume alcohol despite knowing the program frowned on such action. Third, the individual failed to convince me at the hearing that her most recent court-ordered recovery program has equipped her with any new tools that will prevent her from relapsing in the future. According to the individual, her 2005 rehabilitation program consisted of 45 hours of educational training and attendance at Alcoholics Anonymous (AA). Tr. at 74. The individual freely admitted that she only went to AA to get her card signed for the court and that she never worked any of the AA steps.⁶*Id.*

I also considered a number of other factors in this case. I first found that the individual's four alcohol-related arrests were serious in nature. The individual's BAC results were twice the legal limit in the jurisdiction on two occasions and three times the legal limit on two other occasions. Second, I was troubled by the individual's admission at the hearing that she had lied to the LSO concerning her future intentions with regard to alcohol. *Id.* at 24. The record shows that the individual told a personnel security specialist during the 1993 PSI that she had learned a great deal from her 1992 DUI and would not let another DUI occur again. Ex. 11 at 24. During a 1996 PSI, the individual told the LSO that she had changed her drinking habits and had no intention of drinking excessively in the future. Ex. 10 at 55. In addition, the individual told the DOE consultant-psychiatrist in 1997 that she no longer socialized with friends who drank excessively and was trying to make some changes to distance herself from alcohol. Ex. 5 at 6. The DOE consultant-psychiatrist believed the individual and recommended her for EAPRO. The LSO permitted the individual to choose EAPRO in lieu of proceeding to administrative review at that time. It would appear that the LSO has relied several times in the past on the individual's representations, only to now learn that those representations were not truthful. Whether the individual's past untruths are attributable to denial or not, they raise a question whether I can rely on her testimony that she will try to moderate her alcohol consumption and not repeat her mistakes in the future. I also determined that the individual fails to understand the inherent security risks presented by someone who drinks excessively in a social situation. The individual seems to believe that by simply refraining from driving after drinking that she has minimized the risks associated with her consumption of alcohol.

Finally, I considered the very positive recommendations and testaments of the individual's three supervisors. It appears from the cumulative testimony of the three supervisors that the individual's alcohol consumption has not affected her ability to perform her job responsibilities to date. However, sobriety and reliability on the job do not overcome the security concerns at issue here. *Personnel Security Hearing*, (Case No. VSO-0079), 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing*, (Case No. TSO-0337), <http://oha.doe.gov/cases/security/tso0337.pdf>. Excessive consumption of alcohol off the job raises security concerns because of the possibility that a clearance holder may say or do something under the influence of alcohol that compromises national security. *See Personnel Security Hearing*, (Case No. VSO-0106), 26 DOE ¶ 82,767, *aff'd*, *Personnel Security Review*, 26 DOE ¶ 83,009 (1997) (affirmed by OSA 1997). The fact that this apparently has not occurred in the past is no guarantee that it will not occur in the future. In fact, the risk that the individual

⁶ The individual explained that she objected to the religious component of AA. *Id.*

could compromise national security is more palpable in this case than in others that I have handled. The individual travels internationally for work, and both she and her supervisor claim that drinking alcohol is an integral part of her job while in foreign countries. From a security standpoint, placing a person with a 15-year documented history of alcohol problems into a position where she believes she must consume alcohol to perform her job responsibilities is extremely problematic.⁷

In the end, based on all the foregoing considerations, I cannot find that the individual has mitigated the security concerns associated with Criteria H and J.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns advanced by the LSO. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: July 10, 2006

⁷ It was my impression from listening to, and observing the demeanor of, supervisor #3 that he neither understands nor appreciates the security risks associated with placing a person such as the individual in a foreign country where she will simultaneously consume alcohol and conduct business on behalf of the United States government.